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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,878	05/29/2007	Hubertus Hohne	06129	5954

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DENNISON, SCHULTZ & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER	
MCCARRY JR, ROBERT J	
ART UNIT	PAPER NUMBER
3617	

MAIL DATE	DELIVERY MODE
03/23/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/599,878	HOHNE ET AL.	
	Examiner	Art Unit	
	ROBERT J. MCCARRY JR	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 March 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-17 and 20-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *20-22* is/are allowed.

6)☒ Claim(s) *1,2,6,9 and 23-25* is/are rejected.

7)☒ Claim(s) *4, 5, 7, 8, 10-17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 6, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 9, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molyneux et al (US 3,724,754) in view of Brown et al (US 5,566,882).

Molyneux et al discloses a rail anchoring assembly comprised of an elastic clip for contact and holding a rail 10 having a rail foot 11 to a railroad sleeper. The elastic clip is formed from a continuous length of resilient steel bar having a central straight leg portion 35 designed to bear down on the rail foot 11 and two legs 36. The leg is held in place by a holder 13, the holder comprised of a pair of receptacles for receiving the

lower two legs 36 of the clip. The cross section of figure 2 depicts the lower two legs inserted in a channel formed by an extending shoulder 30 that engages the top surface of the lower legs of the clip. The base holder 13 is held in place on the railroad sleeper by a bolt 2.

Molyneux et al discloses the rail anchoring assembly as described above. However, Molyneux et al does not specifically show the anchoring assembly being installed on a concrete sleeper. Brown et al discloses a rail anchoring assembly mounted on a concrete sleeper. It is well known in the art that railroad rails are often supported by concrete sleepers, especially for high speed railroad tracks. It would have been obvious to one of ordinary skill in the art to have utilized an anchoring assembly with a concrete sleeper, like that of Brown et al, as a teaching to show that anchoring assemblies, like that of Molyneux et al, can be anchored into concrete sleepers with the expected result of utilizing a more durable concrete sleeper over traditional wood sleepers in order to increase durability of the rail support and reduce the need for maintenance and replacement.

Molyneux et al discloses the rail anchoring assembly as described above. However, Molyneux et al does not specifically show the anchoring assembly to include a ribbed plate positioned under the rail and engaged by the anchoring assembly. Brown et al discloses an anchoring assembly including a ribbed plate 4 positioned under the rail. It would have been obvious to one of ordinary skill in the art to have applied a ribbed support plate, like that of Brown et al, to an anchoring assembly, like that of Molyneux et al, with the expected result of increasing the shock absorption

characteristics of the rail and the sleeper with the expected result of decreasing deterioration and damage to the rail and the sleeper therefore reducing maintenance needs of the rail and sleeper as well as the anchoring assembly.

Claims 2 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al (US 5,566,882) in view of Fasterding (US 4,802,623).

Brown et al discloses a rail fastening comprised of a rail 2, the rail resting on a ribbed rail pad 4 and anchored to a concrete sleeper, cited as a rail foundation 3. The ribbed rail pad 4 is shown in cross section in figure 6E, and showing the ribbed structure under the rail. The fastening assembly is further comprised of a resilient railway fastening clip 1, having a toe portion 14 which bears on the foot of the rail 2. The rail clip 1 is held in place by a holder 5, the holder having upstanding shoulders 15 and a channel 53 for accepting the extending legs of the clip 1. The holder 5 is further cast into the concrete sleeper with the clip 1 being detachable from the holder 5, and the front wall 7 of the holder 5 is also detachably connected to the holder and the sleeper. The holder is further comprised of a downwardly extending leg 50 that extends and is cast into the concrete sleeper.

Brown et al discloses the anchoring assembly as described above. However, Brown et al does not specifically show insulating material cast into the concrete sleeper. Fasterding et al discloses a concrete sleeper supporting a rail and an anchor and further comprised of a dowel 17 constructed of polyethylene material and attached to a connection portion constructed of glass fiber reinforced plastic material. It is well known in the art that polyethylene material and plastic material act as electrical insulators. It

would have been obvious to one of ordinary skill in the art to have applied plastic and polyethylene material layers, like that of Fasterding et al, to a rail tie and anchor assembly, like that of Brown et al, with the expected result of increasing the insulation of the sleeper and anchoring assembly and reducing wear and corrosion of the components.

Allowable Subject Matter

Claims 20-22 are allowed.

Claims 4, 5, 7, 8, and 10-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. MCCARRY JR whose telephone number is (571)272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Joseph Morano/
Supervisory Patent Examiner, Art Unit 3617

/R. J. McCarry Jr./
Examiner, Art Unit 3617

RJM
March 18, 2010